MARCUS J. JACKSON, ESQ. (SBN 205792)
marcus@jacksonlitigation.com
751 Center Dr., Suite 108-456
San Marcos, CA 92069
Phone: (760) 291-1755; Fax: (760) 432-6109

David M. Arbogast (SBN 167571)
David@SpiroMoss.com
Ira Spiro (SBN 67641)
Ira@SpiroMoss.com
SPIRO MOSS BARNESS LLP
11377 W. Olympic Boulevard, Fifth Floor
Los Angeles, CA 90064-1683
Phone: (310) 235-2468; Fax: (310) 235-2456

Paul R. Kiesel (SBN 119854)
kiesel@kbla.com
Michael C. Eyerly (SBN 178693)
eyerly@kbla.com
KIESEL BOUCHER LARSON LLP
8648 Wilshire Boulevard
Beverly Hills, California 90211
Phone: (310) 854-4444; Fax: (310) 854-0812

Jonathan Shub (SBN 237708)
jshub@seegerweiss.com
SEEGER WEISS LLP
1515 Market Street, Suite 1380
Philadelphia, PA 19107
Phone: (215) 564-2300; Fax (215) 851-8029

Jeffrey K. Berns (SBN 131351)
jberns@jeffbernslaw.com
LAW OFFICES OF JEFFREY K. BERNS
19510 Ventura Boulevard, Suite 200
Tarzana, California 91356
Phone: (818) 961-2000; Fax: (818) 867-4820

Attorneys for Plaintiff and all others Similarly Situated

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DOREEN E. CHRISTIAN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

AMERICAN STERLING BANK, and DOES 1 through 10 inclusive,

Defendants.

CASE NO. 3:08-CV-0090 LAB (RBBx)

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

(1) Violations of the Truth in Lending Act, 15 U.S.C. §1601, *et seq*;

(2) Fraudulent Omissions;

(3) Violation of Bus. & Prof. Code §17200, *et seq*. – "Unfair" and "Fraudulent" Business Practices;

(4) Breach of Contract; and

(5) Tortiuous Breach of the Covenant of Good Faith and Fair Dealing; and

JURY TRIAL DEMANDED

Plaintiff, DOREEN E. CHRISTIAN, individually, and on behalf of all others similarly situated alleges as follows:

I.

INTRODUCTION

1. This is an action pursuant to the Truth in Lending Act ("TILA"), 15 U.S.C. §1601, *et seq.*, California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200, *et seq.*, and other statutory and common law in effect. Plaintiff, DOREEN E. CHRISTIAN, individually, and on behalf of all others similarly situated, brings this action against AMERICAN STERLING BANK, and DOES 1-10 (collectively "Defendant"), based, in part, on Defendant's failure to clearly and conspicuously disclose to Plaintiff and the Class Members, in Defendant's Option Adjustable Rate Mortgage ("ARM") loan documents, and in the required Truth In Lending Disclosure Statements ("TILDS"), accompanying the loans, (i) the actual interest rate on which the payment amounts listed in the TILDS are based (12 C.F.R. § 226.17 (c)); (ii) that making the payments according to the payment schedule listed in the TILDS will result in negative amortization and that the principal balance will increase (12 C.F.R. § 226.19); and (iii) that the payment amounts listed on the TILDS are insufficient to pay both principal and interest.

II.

THE PARTIES

2. Plaintiff, DOREEN E. CHRISTIAN, is, and at all times relevant to this Complaint, was an individual residing in Modesto, California. On or about March 6, 2006, Plaintiff refinanced her existing home loan and entered into an Option ARM loan agreement with Defendants. The Option ARM loan was secured by Plaintiff's primary residence. Attached hereto as Exhibit 1 is a true and correct copy of the Note and the Truth In Lending Act Disclosure Statement (hereafter "TILDS") pertinent to this action.

3. Defendant AMERICAN STERLING BANK is a California corporation licensed to do, and is doing business in California. At all relevant times hereto AMERICAN STERLING BANK was and is engaged in the business of promoting, marketing, distributing and selling the Option Arm loans

that are the subject of this Complaint. AMERICAN STERLING BANK transacts business in Stanislaus County, California and at all relevant times promoted, marketed, distributed, and sold Option Arm loans throughout the United States, including Stanislaus County, California. AMERICAN STERLING BANK has significant contacts with Stanislaus County, California, and the activities complained of herein occurred, in whole or in part, in Stanislaus County, California.

4. Defendants, AMERICAN STERLING BANK, and DOES 1 through 10, shall hereinafter be referred to collectively as "Defendant."

5. At all times mentioned herein, Defendants, and each of them, were engaged in the business of promoting, marketing, distributing, and selling the Option ARM loans that are the subject of this Complaint, throughout the United States, including Stanislaus County, California.

6. Plaintiff is informed, believes, and thereon alleges, that each and all of the aforementioned Defendants are responsible in some manner, either by act or omission, strict liability, fraud, deceit, fraudulent concealment, negligence, respondeat superior, breach of contract or otherwise, for the occurrences herein alleged, and that Plaintiffs' injuries, as herein alleged, were proximately caused by the conduct of Defendants.

7. Plaintiff is informed, believes, and thereon alleges, that at all times material hereto and mentioned herein, each of the Defendants (both named and DOE defendants) sued herein were the agent, servant, employer, joint venturer, partner, division, owner, subsidiary, alias, assignee and/or alter-ego of each of the remaining Defendants and were at all times acting within the purpose and scope of such agency, servitude, joint venture, division, ownership, subsidiary, alias, assignment, alter-ego, partnership or employment and with the authority, consent, approval and ratification of each remaining Defendant.

8. At all times herein mentioned, each Defendant was the co-conspirator, agent, servant, employee, assignee and/or joint venturer of each of the other Defendants and was acting within the course and scope of said conspiracy, agency, employment, assignment and/or joint venture and with the permission and consent of each of the other Defendants.

9. Plaintiff is informed, believes, and thereon alleges, that Defendants, AMERICAN STERLING BANK and DOES 1-10, and each of them, are, and at all material times relevant to this

Complaint, performed the acts alleged herein and/or otherwise conducted business in California. Defendants, and each of them, are corporations or other business entities, form unknown, have, and are doing business in this judicial district.

10. Plaintiff is informed, believes, and thereon alleges, that DOES 1 through 10, inclusive, are securitized trusts, equity funds, collateralized debt obligations (CDO), CDO underwriters, CDO trustees, hedge funds or other entities that acted as additional lenders, loan originators and/or are assignees to the loans which are the subject of this action. Plaintiff will seek leave of Court to replace the fictitious names of these entities with their true names when they are discovered by herein.

11. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants DOES 1 through 10, inclusive, and each of them, are unknown to Plaintiff at this time, and Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff alleges, on information and belief, that each Doe defendant is responsible for the actions herein alleged. Plaintiff will seek leave of Court to amend this Complaint when the names of said Doe defendants have been ascertained.

12. Plaintiff is informed, believes, and thereon alleges, that at all times relevant during the liability period, that Defendants, and each of them, including without limitation those Defendants herein sued as DOES, were acting in concert or participation with each other, or were joint participants and collaborators in the acts complained of, and were the agents or employees of the others in doing the acts complained of herein, each and all of them acting within the course and scope of said agency and/or employment by the others, each and all of them acting in concert one with the other and all together.

III.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 15 U.S.C § 1601 *et seq.* and 28 U.S.C. § 1331.

14. This Court has personal jurisdiction over the parties in this action by the fact that Defendants are either individuals who reside in this District within California or are corporations duly licensed to do business in California.

/ / /

15. Venue is proper within this District and Division pursuant to 28 U.S.C. §1391(b) because a substantial part of the events and omissions giving rise to the claims occurred in this district, and because there is personal jurisdiction in this district over the named Defendant because it regularly conducts business in this judicial district.

IV.

FACTS COMMON TO ALL CAUSES OF ACTION

16. AMERICAN STERLING BANK sells a variety of home loans. The Option ARM or adjustable rate mortgages are the loans that are the subject of this Complaint.

17. The instant action arises out of residential mortgage loan transactions in which Defendants failed to disclose pertinent information in a clear and conspicuous manner to Plaintiff and the Class members, in writing, as required by law.

18. This action also concerns Defendant's unlawful, fraudulent and unfair business acts or practices. Defendant engaged in a campaign of deceptive conduct and concealment aimed at maximizing the number of consumers who would accept this type of loan in order to maximize Defendant's profits, even as Defendant knew their conduct would cause many of these consumers to lose their homes through foreclosure.

19. Plaintiff, along with thousands of other similarly situated consumers, were sold an Option ARM home loan by Defendants. The Option ARM loan sold to Plaintiff and the Class is a deceptively devised financial product. The loan has a variable rate feature with payment caps. The product was sold based on the promise of a low fixed payment based on a low listed interest rate, when in fact Plaintiff and the Class were charged a different, much greater interest rate than promised. Further, Defendant failed to disclose, and by omission, failed to inform Plaintiff of the fact that Defendant's Option ARM loan was designed to, and did, cause negative amortization to occur. Further still, once lured into these loans, consumers cannot easily extricate themselves from these loans because Defendant included in these loans a stiff and onerous prepayment penalty making it extremely difficult, if not impossible, for borrowers to extricate themselves from these loans.

20. The Option ARM loan Defendant sold to Plaintiff and the Class violates the Truth In

Lending Act (TILA). TILA is supposed to protect consumers; it mandates certain disclosures be made by lenders to borrowers concerning the terms and conditions of their home loans. Defendant failed to make these disclosures in connection with the Option ARM loan sold to Plaintiff and the Class.

21. At all times relevant, Defendant sold their Option ARM loan product to consumers, including Plaintiffs, in a false or deceptive manner. Defendant's loan documents indicated that the loan would have a very low payment for the first three (3) to five (5) years and there is no indication of negative amortization. In furtherance of their scheme, Defendant listed a low "teaser" rate in the Note(s) and a low corresponding payment schedule in the TILA Disclosure Statement (hereafter "TILDS") to lure Plaintiff and the Class members into purchasing Defendant's Option ARM loan product. However, the low "teaser" rate was illusory, a false promise. Plaintiff and others similarly situated did not receive the benefit of the low rate promised to them. Once signed on to Defendant's loan, the interest rate applied to Plaintiff's and Class members' loans was immediately and significantly increased.

22. Plaintiff and others similarly situated were consumers who applied for a mortgage loan through Defendant. During the loan application process, in each case, Defendants intended Plaintiff and the Class members to believe that in entering these loan contracts that they would be able to have low mortgage payments. Defendant initiated this scheme in order to maximize the amount of the loans it sold to consumers and to maximize it's profits.

23. Based on the Defendant's representations, and the misconduct alleged herein, Plaintiff and the Class members agreed to finance their primary residence through Defendant's Option ARM loan. Plaintiff and Class members were sold a home loan with a low interest rate of between 1% and 3.0% interest rate (the "teaser" rate), and a corresponding payment schedule based on that the interest rate for the first three (3) to five (5) years of the loan. Defendant also represented to Plaintiff, and Plaintiff reasonably believed, that if she made payments based on the promised low interest rate, which were the payments reflected in the written payment schedule provided to them by Defendants, that the loan would be a no negative amortization home loan and that Plaintiff's payments would be applied to both principal and interest.

24. After, the purported three (3) - five (5) year fixed interest period, Plaintiff and the Class

members reasonably believed, based on the representations contained in the documents Defendant provided to Plaintiff and the Class members, that they would be able to refinance their loan and get a new loan before their scheduled payments increased. However, the payment schedule provided by Defendant failed to disclose, and by omission, failed to inform these consumers that due to the negative amortization that was purposefully built into these loans, Plaintiff and the Class members would be unable to refinance their homes as there would be little or no equity left to refinance.

25. Plaintiff believed these facts to be true because that is what the Defendant intended consumers to believe. Defendant aggressively marketed their product as a fixed, low interest home loan. Defendant knew that if marketed and sold in such a manner, their Option ARM loan product would be a hugely popular and profitable product for them. Defendant also knew, however, that they were selling their product in a false and deceptive manner. While Defendant trumpeted their low rate loans to the public, Defendant knew their promise of a low interest was a mirage.

26. In fact, Defendant's Option ARM loan possessed a low, fixed ***payment*** but not a low, fixed interest rate. Unbeknownst to Plaintiff and the Class members, the actual interest rate they were charged on their loans was not fixed, was not the low teaser interest rate stated in the loan documentation and was in fact considerably higher than going market rates. And, after purchasing Defendant's Option ARM loan product, Plaintiff and the Class members did not actually receive the benefit of the low teaser rate at all or in some cases, at best, received that teaser rate for only a single month. Immediately, thereafter, Defendant in every instance and for every loan, secretly increased the interest rate they charged consumers. The now-increased interest charges incurred by Plaintiff and the Class members, over and above the fixed interest payment rate, were added to the principal balance on their home loans in ever increasing increments, substantially reducing the equity in these borrowers' homes.

27. In stark contrast to this reality, Defendant, through the standardized loan documents they created and supplied to Plaintiff, stated that negative amortization was only a mere possibility. Defendant concealed and failed to disclose the fact that the loan, as presented and designed, in fact, guaranteed negative amortization. Defendant failed to disclose and omitted the objectively material fact that negative amortization was absolutely certain to occur if consumers followed the payment schedule

listed by Defendant in the TILDS. This information was objectively material and necessary for consumers to make an informed decision because this would have revealed that the loan's principal balance would increase if the payment schedule was followed, thereby rendering it impossible to refinance the loan at or around the time the prepayment penalty expired and/or by the time the interest and payment rates re-set. In this respect, Defendant utterly failed to place any warning on the Truth and Lending Disclosure Form about negative amortization.

28. At all times relevant, once Plaintiff and the Class members accepted Defendant's Option ARM loan contract, they had no viable option by which to extricate themselves because these Option ARM loan agreements included a draconian pre-payment penalty for a period of up to three years.

29. The Option ARM loans sold by Defendant all have the following uniform characteristics:

(a) There is an initial low interest rate or "teaser" rate that was used to entice the Plaintiff into entering into the loan. The rate offered was typically 1%-3%;

(b) The loan has with it a corresponding low payment schedule. The documentation provided intended to misleadingly portray to consumers that the low payments for the first three (3) to five (5) years were a direct result of the low interest rate being offered;

(c) The initial payments in the required disclosures were equal to the low interest rate being offered. The purpose was to assure that if someone were to calculate what the payment would be at the low offered interest rate, it corresponded to the payment schedule. This portrayal was intended to further mislead consumers into believing that the payments were enough to cover all principal and interest;

(d) The payment has a capped annual increase on the payment amount; and

(e) The loan includes a prepayment penalty preventing consumers from securing a new loan for a period of up to three (3) years.

30. Defendant uniformly failed to disclose, and by omission, failed inform consumers, including Plaintiff and the Class members, in a clear and conspicuous manner that the fixed "teaser" rate offered by Defendant was actually never applied to their loans, or, at best, was only applied for thirty (30) days. Thereafter, the true interest charged on the loans was significantly higher than the promised rate.

31. Defendant uniformly failed to disclose, and by omission, failed to inform consumers, including Plaintiff and the Class members, that the payments set forth in Defendant's schedule of payments were insufficient to cover the actual amount they were being charged for the loan, and that this was, in fact, a loan that would cause the Plaintiff and the Class members to lose the equity they have in their home.

32. Defendant uniformly failed to disclose, and by omission, failed to inform consumers, including Plaintiff and the Class members, that when the principal balance increased to a certain level, they would no longer have the option of making the fixed interest payment amount.

33. Disclosing whether a payment will result in negative amortization is of critical importance to consumers. If the disclosed payment rate is insufficient to pay both principal and interest, one of the consequences of negative amortization is a loss of equity. Defendants are and at all times relevant hereto have been aware that clear and conspicuous disclosure of the actual interest rate and a payment rate sufficient to avoid negative amortization and the concomitant loss of equity is extremely important material information.

34. At all times relevant, Defendants, and each of them, knew or should have known, or were reckless in not knowing, that: (i) the payment amounts listed in the TILDS were insufficient to pay both interest and principal; (ii) negative amortization was certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendants; and (iii) that loss of equity and/or loss of Plaintiff's and the Class members residence was substantially certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendant.

35. In spite of its knowledge, Defendant sold its Option ARM loans as a product that would provide Plaintiff and the Class members with a low payment and interest rate for the first three (3) to five (5) years of the loan, and at all times relevant, failed to disclose and/or concealed by making partial representations of material facts when Defendant had exclusive knowledge of material facts that negative amortization was certain to occur. This concealed and omitted information was not known to Plaintiff and the Class members and which, at all times relevant, Defendant failed to disclose and/or actively concealed by making such statements and partial, misleading representations to Plaintiff and all others similarly situated. Because the ARM loans did not provide a low interest rate for the first three

(3) to five (5) years of the Note and the payment disclosed by Defendants were insufficient to pay both principal and interest, negative amortization occurred.

36. The true facts about Defendant's ARM loans is that they do not provide the low interest rate promised, and are certain to result in negative amortization.

37. Disclosure of a payment rate that is sufficient to pay both principal and interest on the loans is of critical importance consumers. If the disclosed payment rate is insufficient to pay both principal and interest, one of the consequences is that negative amortization or loss of equity will occur. Defendant is and, at all times relevant hereto, has been aware that the ability of the disclosed payment rate to pay both principal and interest so as to avoid negative amortization is one of the most important terms of a loan.

38. To this day, Defendant continues to conceal material information from consumers, and the public, that: (i) the payment amounts listed in the TILDS were insufficient to pay both interest and principal; (ii) negative amortization was certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendants; and (iii) that loss of equity and/or loss of Plaintiff's and the Class members residence was substantially certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendant.

39. In the end, the harm caused by Defendant's failures to disclose and omissions, as alleged herein, grossly outweighs any benefit that could be attributed to them.

40. Knowing the truth and motivated by profit and market share, Defendants have knowingly and willfully engaged in the acts and/or omissions to mislead and/or deceive Plaintiff and others similarly situated.

41. The Option ARM loans have resulted and will continue to result in significant loss and damage to the Class Members, including but not limited to the loss of equity these consumers have or had in their homes.

42. The facts which Defendants misrepresented and concealed, as alleged in the preceding paragraphs, were material to the decisions about whether to purchase the Option ARM loans in that Plaintiff and others similarly situated would not have purchased these loans but for Defendant's unlawful, unfair, fraudulent and/or deceptive acts and/or practices as alleged herein.

43. Defendant engaged in the unlawful, unfair, fraudulent, untrue and/or deceptive marketing scheme to induce consumers to purchase their ARM loans.

44. Defendant's unlawful, unfair, fraudulent, untrue and/or deceptive acts and/or practices were committed with willful and wanton disregard for whether or not Plaintiff or others similarly situated would receive a home loan that would actually provide the low interest and payment rate for the first three (3) to five (5) years of the loan sufficient to pay both principal and interest.

45. Upon information and belief, and at all times relevant during the liability period, Defendant possessed full knowledge and information concerning the above facts about the ARM loans, and otherwise marketed and sold these ARM loans throughout the United States, including the State of California.

V.

CLASS ACTION ALLEGATIONS

46. Plaintiff bring this action on behalf of themselves, and on behalf of all others similarly situated (the "Class") pursuant to Federal Rule of Civil Procedure, Rules 23(a), and 23(b), and the case law thereunder. The classes Plaintiff seeks to represent are defined as follows:

> **The California Class**: All individuals who, within the four year period preceding the filing of Plaintiff's Complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendant on their primary residence located in the State of California. Excluded from the California Class are Defendant's employees, officers, directors, agents, representatives, and their family members; and
>
> **The National Class**: All individuals in the United States of America who, within the four year period preceding the filing of Plaintiff's complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendant on their primary residence located in the United States of America. Excluded from the National Class are Defendant's employees, officers, directors, agents, representatives, and their family members.
>
> An appropriate sub-Class exists for the following Class Members:
>
> All individuals in the United States of America who, within the three year period preceding the filing of Plaintiff's complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendant on their primary residence located in the United States of America. Excluded from the National sub-Class are Defendant's employees, officers, directors, agents, representatives, and their family members.

Plaintiff reserves the right to amend or otherwise alter the Class definitions presented to the Court at the appropriate time, or propose or eliminate sub-Classes, in response to facts learned through discovery, legal arguments advanced by Defendants or otherwise.

47. Numerosity: The Class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of Class members is unknown at this time, Plaintiff is informed and believes that the entire Class or Classes consist of approximately several thousand members.

48. Commonality: Common questions of law or fact are shared by the Class members. This action is suitable for class treatment because these common questions of fact and law predominate over any individual issues. Such common questions include, but are not limited to, the following:

(1) Whether Defendant's acts and practices violate the Truth in Lending Act, 15 U.S.C. §1601, et seq;

(2) Whether Defendant's conduct violated 12 C.F.R. § 226.17;

(3) Whether Defendant's conduct violated 12 C.F.R. § 226.19;

(4) Whether Defendant engaged in unfair business practices aimed at deceiving Plaintiff and the Class members before and during the loan application process;

(5) Whether Defendant, by and through their officers, employees, and agents failed to disclose that the interest rate actually charged on these loans was higher than the rate represented and promised to Plaintiff and the Class members;

(6) Whether Defendant, by and through their officers, employees and agents concealed, omitted and/or otherwise failed to disclose information they were mandated to disclose under TILA;

(7) Whether Defendant failed to disclose the true variable nature of interest rates on adjustable rate mortgage loans and adjustable rate home equity loans;

(8) Whether Defendant failed to properly disclose the process by which negative amortization occurs, ultimately resulting in the recasting of the payment structure over the remaining lifetime of the loans;

(9) Whether Defendant's failure to apply Plaintiff's and the Class members'

payments to principal as promised in the standardized form Note(s) constitutes a breach of contract, including a tortiuous breach of the covenant of good faith and fair dealing;

(10) Whether Defendant's conduct in immediately raising the interest rate on consumers' loans so that no payments were applied to the principal balance constitutes a tortiuous breach of the covenant of good faith and fair dealing;

(11) Whether Defendant's marketing plan and scheme misleadingly portrayed or implied that these loans were fixed rate loans, when Defendant knew that only the periodic payments were fixed (for a time) but that interest rates were not, in fact, "fixed;"

(12) Whether the terms and conditions of Defendant's Option ARM home loan are unconscionable;

(13) Whether Plaintiff and the Class are entitled to damages;

(14) Whether Plaintiff and the Class members are entitled to punitive damages; and

(15) Whether Plaintiff and the Class members are entitled to rescission.

49. Typicality: Plaintiff's claims are typical of the claims of the Class members. Plaintiff and the other Class members were subjected to the same kind of unlawful conduct and the claims of Plaintiff and the other Class members are based on the same legal theories.

50. Adequacy: Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the other members of the Class Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends on prosecuting this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiff and her counsel.

51. Ascertainable Class: The proposed Classes are ascertainable in that the members can be identified and located using information contained in Defendant's mortgage lending records.

52. This case is brought and can be maintained as a class action under Rule 23(b)(1), 23(b)(2), and 23(b)(3):

(a) Risk of Inconsistent Judgments: The unlawful acts and practices of Defendants, as alleged herein, constitute a course of conduct common to Plaintiff and each Class member. Prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendant and/or substantially impair or impede the ability of individual Class members to protect their interests;

(b) Injunctive and/or Declaratory Relief to the Class is Appropriate: Defendants, and each of them, have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief with respect to the Class as a whole appropriate; and

(c) Predominant Questions of Law or Fact: Questions of law or fact common to the Class members, including those identified above, predominate over questions affecting only individual Class members (if any), and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class action treatment will allow a large number of similarly situated consumers to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudicating each such individual lawsuit would be substantial.

VI.

FIRST CAUSE OF ACTION

Violations of Truth in Lending Laws, 15 U.S.C. §1601, *et seq.*

(Against All Defendants)

53. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

54. 15 U.S.C. §1601, *et seq*., is the Federal Truth in Lending Act (‘TILA”). The Federal Reserve Board of Governors implements the Federal Truth in Lending Act through Regulation Z (12 C.F.R. §226) and its Official Staff Commentary. Compliance by lenders with Regulation Z became

mandatory October 1, 1982. Likewise, Official Staff Commentary issued by the Federal Reserve Board is also binding on all lenders.

55. The purpose of TILA is to protect consumers. This is stated in 12 C.F.R. § 226.1, which reads:

> **§226.1 Authority, purpose, coverage, organization, enforcement and liability. . .**
>
> (b) Purpose. The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and costs. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling . . .

56. Reg. Z also mandates very specific disclosure requirements regarding home loans with which lenders, including Defendant, must comply:

> **§ 226.17. General disclosure requirements.**
>
> (a) Form of disclosures. (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under § 226.18.

57. The purpose of the TILA is to assure a meaningful disclosure of credit terms so that the borrowers will be able to compare more readily the various credit terms available to them and avoid the uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing practices.

58. Defendant's Option ARM loan violates TILA because Defendants failed to comply with the disclosure requirements mandated by Regulation Z and Official Staff Commentary issued by the Federal Reserve Board. Defendant failed in a number of ways to clearly, conspicuously and/or accurately disclose the terms of the Option ARM loan to Plaintiff as Defendant was required to do under TILA. These violations are apparent on the face of the TILA Disclosure Forms.

59. The TILA violations committed by Defendants are more specifically detailed as follows:

A. Defendants' Failure to Clearly and Conspicuously Disclose That the Payment Schedules Are Not Based on the Actual Interest Rate Violates TILA

60. 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 require the lender to make disclosures concerning the interest rate and payments in a clear and conspicuous manner. Further, a misleading disclosure is as much a violation of TILA as a failure to disclose at all.

61. As for Plaintiff and the Class members Option ARM loans, Defendant violated 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 in that it failed to clearly and conspicuously disclose the interest rate upon which the payments listed in the TILDS are based.

62. The scheduled payment amounts and interest rate listed in the Note and TILDS for each of the subject loans are unclear and inconspicuous. In fact, the payment amounts are not based on the interest rate listed but instead, were based upon an interest rate which was neither disclosed nor made conspicuous as required under TILA.

63. At all times relevant, Defendant knowingly and intentionally included in each of the Notes and TILDS a schedule of payments which was not based upon the interest rate listed in these same documents. Defendant's failure to clearly and conspicuously disclose the interest rate upon which the payment amounts were based was, and is, deceptive.

64. Further, in addition to Defendant's failure to disclose in the Note and the TILDS that the payments listed were not based upon the interest rate listed, Defendant knowingly and intentionally expressly and/or impliedly represented in the loan documents that the payments would be applied to both principal and interest. However, in truth, if Plaintiff followed the payment schedule provided by Defendant, the payments were guaranteed to be insufficient to pay the principal and interest on the loan.

65. At all times relevant, Defendant failed to clearly and conspicuously disclose to Plaintiff and the Class members that if they made payments according to the payment schedule set forth in the TILDS, that negative amortization was not just a mere possibility, it was an absolute certainty.

66. At all times relevant, Defendant purposefully and intentionally failed to disclose to Plaintiff, and all others similarly situated, the interest rate upon which the payment schedule was based in order to mislead and deceive Plaintiff and Class members into believing that they would be getting a

loan with a low fixed payment rate that would be sufficient to pay both interest and principal.

67. At all times relevant, the payment amount provided by Defendant was intended to and did deceive consumers into falsely believing they would, in fact, receive the low interest rate upon which the payment schedule is based. While the Note states the amount of Plaintiff's initial monthly payment, however, the initial monthly payment amounts stated in the Note and TILDS are not, in anyway related to the interest rate listed in the Note(s) and TILDS.

68. Defendant employed the aforementioned bait-and-switch tactics in a common and uniform class-wide basis. In particular, had Defendants clearly and conspicuously disclosed a payment amount sufficient to cover both principal and interest, the payment amounts would have to have been almost double the payment amounts listed.

69. The TILDS are also deceptive for much the same reason. The TILDS list a schedule of payments, yet for up to the five years the listed payment amounts have no relation to, and are also not based on the interest rate listed in the TILDS.

70. At all times relevant, Defendant failed to clearly, conspicuously, and accurately disclose a payment amount that corresponds to the actual interest rate being charged on the loan sufficient to pay the true costs of the loan. Plaintiff and the Class members reasonably believed that if they made the payments according to Defendant's payment schedule, the payments would, in fact, be paying off the loan. However, the true fact is that the payment amounts stated in Defendant's payment schedule did not include any principal on the loans at all and only covered a portion of the interest Defendant was charging on these loans.

71. Official Staff Commentary to 12 C.F.R. § 226.17(a)(1) states that "this standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression or format, ***the disclosures must be presented in a way that does not obscure the relationship of the terms to each other***…"

72. At all times relevant, Defendant's Option ARM loans violated 12 C.F.R. § 226.17(a)(1) in that the relationship between the payments, for up to the first five years of the loans, bear no relationship to the interest rate listed in the TILDS. Therefore, as a direct and proximate result, the form of disclosure used by Defendants obscured the relationship between the interest rate listed in the Note(s)

and TILDS and the payment schedule provided.

B. Defendants' Failure to Clearly and Conspicuously Disclose The Legal Obligation Violates Truth in Lending Laws

73. 12 C.F.R. § 226.17(c)(1) requires that "[t]he disclosures shall reflect the terms of the legal obligation between the parties."

74. Official binding staff commentary on 12 C.F.R. § 226.17(c)(1) requires that: "[t]he disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under § 226.20(c), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided."

75. The Official binding staff commentary further states, at 12 C.F.R. § 226.17(c)(1)(2), that "[t]he legal obligation normally is presumed to be contained in the note or contract that evidences the agreement."

76. Official Staff Commentary to 12 C.F.R. § 226.17(c)(1) states that "[i]f a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures."

77. At all times relevant during the liability period, Defendant's Option ARM loans violated 12 C.F.R. § 226.17(c) in that the Note(s) and TILDS did not disclose, and by omission, failed to disclose what Plaintiff's and the Class members' were legally obligated to pay. In particular, the Note(s) charged these borrowers a much higher monthly amount than what Defendant disclosed. Defendants accomplished this deception by only listing a partial payment in the TILDS, rather than a payment amount that was sufficient to pay what these borrowers were being charged for their loans, and were legally obligated to pay.

78. As a direct and proximate result of Defendant's omissions and failures to clearly and conspicuously disclose Plaintiff's and the Class members' legal obligations under the loans, Defendant took the partial payments and secretly added the deficit, each month, to principal, thereby causing negative amortization to occur.

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C. Defendants' Failure to Clearly and Conspicuously Disclose The Actual Interest Rate Violates Truth in Lending Laws

79. 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 require the lender to make disclosures concerning the interest rate in a clear and conspicuous manner. Further, a misleading disclosure is as much a violation of TILA as a failure to disclose at all. Defendant failed to meet the disclosure mandates required of them concerning the interest rate Defendant actually applied to Plaintiff's and Class members' loans, as well as the interest Defendant actually charged Plaintiff and the Class members.

80. Defendant's disclosure in the Promissory Note concerning the interest rate is, at best, unclear and inconspicuous. At worst, it is intentionally deceptive. In either instance, it is certainly different than the interest rate set forth by Defendants in the TILD. The interest rate information set forth by Defendants in the Note conflicts with the interest rate information set forth by Defendant in the TILDS.

81. The interest rate set forth in the Note is the teaser rate that Defendant, in fact, applied to the loan for a single month. However, at all times relevant during the liability period, Defendant did not make it clear in the Note(s) or TILDS that this low promised rate (the same rate upon which Defendant base the written payment schedule provided to Plaintiffs) is only offered for the first thirty (30) days of the loan. In furtherance of their scheme, Defendant employed the most convoluted, confusing and circuitous methodology in describing the interest rate. In particular, Defendant used terms like "may" when discussing potential interest rate increases, when in fact it was an absolute certainty the interest rate listed would only be provided for the first thirty days of the loan, and would be raised when the first payment was due. In one part of the Note, Defendant state that the promised low interest rate is the rate until the "change date." A description of the change date is found in another part of the Note. The convoluted and disjointed method employed by Defendant to provide this information to consumers makes it extremely difficult, if not impossible, for anyone to determine that, in fact, that the change date corresponds to the very first monthly payment Plaintiff and the Class members made on their loans.

82. The convoluted language used by Defendant to disclose the interest rate on Plaintiff's and the Class members' loans is not clear and conspicuous. Rather, the disclosures used by Defendant

were purposefully unclear and meant to mislead and deceive Plaintiff and the Class members. In particular, it is virtually impossible to discern when Plaintiff and the Class members would receive the low interest rate they were promised, if, in fact, it can be determined at all. And, the truth is that Plaintiff and the Class members never received the low interest rate, or in some cases received it for only thirty days. Defendant's promise of a low interest rate is and was wholly illusory and the deception, as alleged herein, was uniformly practiced on Plaintiff and all Class members by Defendant to facilitate sales of their loans to consumers.

83. The Note also sets forth the amount of Plaintiffs' and Class members' initial monthly payments. The "initial monthly payments" amount figure is exactly equal to what the payments would be if the listed low interest rate promised to Plaintiff by Defendant was true and was, in fact, applied to the principal balance on the loans. This is a further deception committed by Defendant, because the real interest rate charged on the loans by Defendant is much higher than the low interest rate promised to Plaintiff and the Class members. Thus, the "initial monthly payments" amount provided by Defendant was intended to and did deceive consumers into falsely believing that they would, in fact, receive the teaser interest rate promised to them.

84. The TILDS is also unfairly confusing and deceptive for much the same reason. The scheduled payments for the first three (3) to five (5) years of the loan lists payment amounts based on the low "teaser" rate, with the agreed 7.5% annual increase in the payment amount. In truth, however, this payment schedule has no real relation to the interest rate Defendant actually charged Plaintiff and the Class members on their loans.

85. At all times relevant during the liability period, Defendant failed to clearly, conspicuously and accurately disclose the actual interest rate applied to Plaintiffs' and Class members' loans. Defendant also failed to disclose, and by omission, failed to inform Plaintiff and the Class members that the payment amounts listed in the payment schedule did not include any amount towards the principal on the loan and were, in fact, insufficient to pay all of the interest accruing. Based on the payment schedule listed in the Note and TILDS, Plaintiff and the Class members reasonably believed that the payments would be sufficient to meet the loan obligations in the Note(s). However, the true fact is that the payment schedule provided by Defendant did not pay any principal on the loan at all and only

included a partial payment towards the interest Defendant charged Plaintiff and the Class members for these loans.

86. At all times relevant during the liability period, Defendant failed to clearly, conspicuously and accurately disclose in the Note and TILDS a payment amount that was sufficient to pay both principal and interest. Plaintiff reasonably believed that if she made the payments according to Defendant's payment schedule, the payments would, in fact, be paying off both principal and interest. However, the true fact is that the payment amounts stated in Defendant' payment schedule did not include any principal on the loans at all and were only a partial payment of the interest Defendant were charging on these loans.

87. At all times relevant during the liability period, Defendant failed to disclose, and by omission, failed to inform consumers that if they followed the payment schedule provided by Defendant, their payments will not be applied to principal at all and were not sufficient enough to cover all of the interest Defendant charged on the loan(s).

D. Defendant's Failure to Clearly and Conspicuously Disclose Negative Amortization Violates the Truth in Lending Laws

88. 12 C.F.R. § 226.19 sets forth additional specific disclosure requirements for residential home loans:

> **§ 226.19. Certain residential mortgage and variable-rate transactions.** . . .
> (b) Certain variable-rate transactions. If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. . .
> (vii) *Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover*. (Emphasis added.)

89. The negative amortization disclosure is required and must be made clearly and conspicuously, and done in a manner that does not obscure its significance. The disclosure must state whether the loan and payments established under the terms dictated by the Defendant is a negative amortizing loan.

90. In 1995, and continuing each time new Official Staff Commentary was issued, the Federal Reserve Board made clear that when the loan was a variable rate loan with payment caps, such as those that are the subject of this lawsuit, that the disclosure requires a definitive statement about negative amortization:

12 CFR Part 226

[Regulation Z; Docket No. R-0863]

Monday, April 3, 1995

AGENCY: Board of Governors of the Federal Reserve System.

> ACTION: Final rule; official staff interpretation.
> "For the program that gives the borrower an option to cap monthly payments, the creditor must fully disclose the rules relating to the payment cap option, including the effects of exercising it (such as ***negative amortization occurs*** and that ***the principal balance will increase***)…" (Found at C.F.R. § 226.19)

91. At all times relevant, statutory and common law in effect make it unlawful for a lender, such as Defendant, to fail to comply with the Federal Reserve Board's Official Staff Commentary as well as Regulation Z and TILA.

92. Defendant sold Plaintiff and the Class members Option ARM loans which have a variable rate feature with payment caps. Defendant failed to include any reference in the TILDS or in the Note(s) that negative amortization would occur if Plaintiff and the Class members followed the payment schedule provided by Defendant.

93. In fact, the only place in the Note where Defendant even inferentially references negative amortization caused Plaintiff and all other similarly situated reasonable persons to believe that negative

amortization was only a mere possibility, rather than an absolute certainty. In fact, these loans were designed in such a way so as to make negative amortization an absolute certainty. And, even when a separate explanation was provided, Defendant omitted the important material fact that these loans and payment schedules would, in fact, guarantee negative amortization.

94. Defendant's statement in the Note(s) that "[i]f the Minimum Payment is not sufficient to cover the amount of interest due then negative amortization will occur" was an artfully contrived half-truth and did not alert or inform Plaintiff that the payment schedule provided by Defendant would absolutely guarantee that negative amortization was going to occur on these loans. Rather, Defendant made it appear that as long as the payments were made according to the schedule listed in the TILDS, that there would be no negative amortization.

95. At all times relevant, Defendant's statement in the Note, TILDS, and any other disclosures they provided, described negative amortization as only a mere possibility, and therefore was misleading and deceptive. In fact, Defendant's Option ARM loan was designed in such a way as to guarantee negative amortization. TILA demands more than a statement that the payment could be less, or "may" be less, when Defendant knew that the payments were less, and would always be less, than the full amount required to pay both principal and interest.

E. Defendant's Failure to Clearly and Conspicuously Disclose that the Initial Interest Rate is Discounted Violates Truth in Lending Laws

96. As previously stated, the informed use of credit means being able to make decisions, as well as being able to plan an individual's finances. Every month consumers look at their income and budget where their funds must be paid. The biggest investment in one's life is generally that person's home. In fact, it is often referred to as "the American Dream" to own a home.

97. Variable rate loans are based on a "margin" and an "index." The index is often the Prime Rate or the LIBOR exchange rate. The margin is the amount the lender charges over that rate, basically it is the lender's profit on the loan.

98. TILA and Regulation Z require disclosures to be clear and conspicuous so people understand what their obligations are. In particular, when the payment is not based on that index and margin a separate disclosure is required. The disclosure must also inform that interest rate and payment

may go up and clearly and conspicuously provide the circumstances under which the rate and payment will increase. Further, the disclosure must inform the borrower what the true cost of the loan is.

99. The Federal Reserve Board established disclosure requirements for variable rate loans. 26 C.F.R. § 226.19 requires a lender to disclose the frequency of interest rate and payment adjustments to borrowers. If interest rate changes will be imposed more frequently or at different intervals than payment changes, a creditor must disclose the frequency and timing of both types of changes.

100. The disclosures required pursuant to 12 C.F.R. § 226.19 are extremely important because Plaintiff and other consumers similarly situated need this information in order to budget their money. They need to know if their house payments are going to go up so that they can plan for it. If the change comes as a surprise, they face a much greater possibility of defaulting on their loans and losing their homes.

101. Here, Defendant states only that the interest rate ***may*** increase in the future. However, an interest rate increase was in fact far more certain than this disclosure led Plaintiff and the Class members to believe. If Defendant had given the Plaintiff and the Class members the promised low interest rate for any initial period of time, the interest rate was guaranteed to go up even without any change in the index. Thus, the increase in the interest rate on these loans was not just a possibility; it was an absolute certainty and Defendant failed and omitted this material information in their disclosures to Plaintiff and the Class members.

102. Defendant's loan documents state that the interest rate may increase during the term of this transaction if the index increases. This, however, was not the only circumstance that could cause an increase in the interest rate because the disclosed interest rate was discounted.

103. At all times relevant during the liability period, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members that the initial interest rate was discounted, creating the possibility of an increase even when the index did not rise. Due to the initial discounted interest rate being listed at 1% to 3%, the interest rate would increase because the index and margin were between 5% and 8% higher. Even when Defendant did provide a disclosure that stated the initial payment was not based on the index, it did so in a manner that was not clear and conspicuous. Because the loan documents failed to provide this extremely important material information in a clear and

conspicuous manner that did not obscure its importance, Defendant's disclosure failed to meet the standards mandated under TILA.

104. Defendant failed to disclose to Plaintiff and the Class members that their interest rate was, with 100% certainty, going to increase, regardless of whether or not the index upon which their loans are based changed. As such, Defendant violated TILA and Regulation Z by providing Plaintiff and the Class members with unclear, deceptive and poorly drafted or intentionally misleading disclosures.

F. Defendant's Failure to Disclose the Composite Interest Rate Violates Truth in Lending Laws

105. Defendant provided Plaintiff and the Class members with multiple, conflicting interest rates when describing the costs of this loan. On the TILDS, Defendant set forth one interest rate, while on the Note, Defendant set forth one or two other, different interest rates.

106. The official staff commentary to 226 C.F.R. § 17(C)(8) states:

> *Basis of disclosures in variable-rate transactions*. The disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. **However, in a variable-rate transaction with a** seller buydown that is reflected in the credit contract, a consumer buydown, or **a discounted or premium rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term.** (See the commentary to section 226.17(c) for a discussion of buydown,

discounted, and premium transactions and the commentary to section 226.19(a)(2) for a discussion of the redisclosure in certain residential mortgage transactions with a variable-rate feature.)

107. The reason for this requirement is clear. Consumers cannot make an informed decision when they cannot compare the cost of credit to other proposals. It is therefore incumbent upon Defendant to show the composite interest rate in effect so that the borrowers can understand exactly what they will be paying for the loan.

108. A lender violates TILA, Reg. Z and the OTS guidelines by failing to list the composite rate in variable rate loans that have a discounted initial rate. The loan sold to Plaintiff and Class members by Defendant is a variable-rate loan. At all times relevant during the liability period, Defendant listed an interest rate in the Note(s) that, in truth, would only be provided for the first thirty (30) to forty-five (45) days of a thirty year loan, and would, with one hundred percent certainty, be increased after that first month. Because Defendant failed to clearly and conspicuously disclose the composite annual percentage rate on these loans, and instead listed different interest rates in different places in the documents provided to consumers, Defendant violated TILA and Regulation Z, and failed to provide disclosures that did not obscure relevant information.

109. As a direct and proximate result of Defendant's violations of TILA, as alleged herein, Plaintiff and the Class members have suffered injury in an amount to be determined at time of trial. If Defendant had not violated TILA and had instead clearly and conspicuously disclosed the material terms of Defendant's Option ARM loan, as alleged herein, Plaintiff and the Class members would not have entered into the home loan contracts which are the subject of this action. Because Defendant failed to make the proper disclosures required under TILA, Plaintiff and the Class members now seek redress in an amount and/or type as proven at time of trial.

G. Defendant's Failure to Clearly and Conspicuously Disclose the Effect of the Payment Cap on the True Cost of the Loan Violates Truth in Lending Laws

110. The Option ARM loans at issue each contained a variable rate feature with an initial teaser rate with payment caps. The payment cap is a limit on how much the payment may be increased annually. Its purpose is to provide borrowers with a limit on how much their payment can increase from

year to year. The loans issued by Defendant had a 7.50% payment cap, which means that a borrower would only see their payment rise each year by a maximum of 7.50%. (i.e. a $1,000 monthly payment in year one, could go to a $1,075 payment in year two.)

111. The Official Staff Commentary to 12 C.F.R. § 226.17(c)(1)(10)(iii) states that "[i]f a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures." Thus, at all times relevant during the liability period, Defendant had a duty to Plaintiff and the Class members to disclose the effect the payment caps would have on the loans in the TILD.

112. At all times relevant during the liability period, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members that the payment cap would cause hundreds, if not thousands of dollars, each month, to be secretly added to principal.

113. As a direct and proximate result, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members of the effect of the payment cap in violation of 12 C.F.R. § 226.17.

114. WHEREFORE, Plaintiff and the Class members are entitled to an order declaring that Defendant violated TILA, 15 U.S.C. §1601, et seq., that Plaintiff and the Class have the right to rescind pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23, attorneys fees, litigation costs and expenses and costs of suit, and for an order rescinding Plaintiff's individual mortgage and those of any class member desirous of such relief, and for an order awarding other relief as the Court deems just and proper.

VII.

SECOND CAUSE OF ACTION

FRAUDULENT OMISSIONS

(Against All Defendants)

115. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

116. As alleged herein, pursuant to TILA, 15 U.S.C. §1601, *et seq.*, Regulation Z (12 C.F.R. §226) and the Federal Reserve Board's Official Staff Commentary, Defendant had a duty to disclose to

Plaintiff, and each Class member, (i) the actual interest rate on which the payment amounts listed in the TILDS are based (12 C.F.R. § 226.17(c)); (ii) that making the payments according to the payment schedule listed in the TILDS will result in negative amortization and that the principal balance will increase (12 C.F.R. § 226.19); and (iii) that the payment amounts listed on the TILDS are insufficient to pay both principal and interest.

117. Defendant further had a duty to disclose to Plaintiffs, and each Class member: (i) the actual interest rate being charged on the Note(s), (ii) that negative amortization would occur and that the "principal balance *will* increase"; and (iii) that the initial interest rate on the note was discounted, based upon Defendant's partial representations of material facts when Defendant had exclusive knowledge of material facts that negative amortization was certain to occur.

118. The Note(s) state at ¶ 3 (A) "I will make a payment every month." The Note(s) further state at ¶ 3 (D): "This Payment Cap applies only to ***the Principal and Interest Payment***..." And, under ¶ 7(A) entitled "BORROWER'S FAILURE TO PAY AS REQUIRED," the Note(s) state "[t]he amount of the charge will be 5.000% of ***my overdue payment of Principal and Interest***." However, the true facts are that the payment rate provided by Defendant was insufficient to pay both interest and principal. In fact, the payment rate was not even sufficient to pay enough interest to avoid negative amortization which, under the terms of the Note(s) was certain to occur.

119. The Note(s) further state, at ¶ 3(G) "***my Minimum Payment could be less or greater than the amount of interest portion of the monthly payment*** that would be sufficient to repay the unpaid Principal ..." And, "[f]or each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of interest portion and will add the difference to my unpaid Principal ..." However, the payment schedule provided by Defendant in the TILDS was absolutely incapable of covering the amount of interest due and therefore these statements were false in that it omitted this material fact.

120. The Note(s) state an interest rate and an initial payment amount based on that interest rate. The TILDS Defendant gave to Plaintiff and the Class members include the schedule of payments (including that initial payment rate) but yet disclose a different interest rate. The payment schedule, however, is wholly unrelated to the true interest rate being charged on the loan and, at all times relevant

during the liability period, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members of this important material information.

121. The aforementioned omitted information was not known to Plaintiff and the Class members and which, at all times relevant, Defendant failed to disclose and/or actively concealed by making such statements and partial, misleading representations to Plaintiff and all others similarly situated. Because the Option ARM loans did not provide a low interest rate for the first three (3) to five (5) years of the Note, and the payment rate disclosed by Defendant was insufficient to pay both principal and interest, negative amortization occurred.

122. Defendant, and each of them, failed to disclose, and by omission failed to inform Plaintiff and each Class member that (i) the payment rate provided to Plaintiff and the Class members on the TILD was insufficient to pay both principal and interest; (ii) that negative amortization was absolutely certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendant; and (iii) that loss of equity and/or loss of Plaintiff's and the Class members' residence was substantially certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendant.

123. As alleged herein, Defendant had a duty to disclose to Plaintiff, and each Class member, and at all times relevant, failed to disclose and/or concealed material facts by making partial representations of some material facts when Defendant had exclusive knowledge of material facts, including but not limited to, (i) the payment amounts listed in the TILDS were not based on the actual interest rate charged on the Note(s); (ii) that negative amortization was absolutely certain to occur, and (iii) that the payment amounts listed in the Note and TILDS are insufficient to pay both principal and interest. The concealed and omitted information was not known to Plaintiff and the Class members and which, at all times relevant, Defendant failed to disclose and/or actively concealed by making such statements and partial, misleading representations to Plaintiff and all others similarly situated.

124. From the inception of Defendant's ARM loan scheme, until the present, Defendant has engaged in a purposeful and fraudulent scheme to omit material facts known solely to them, and not reasonably discoverable by Plaintiff and the Class members, regarding the true facts concerning the actual interest rate charged on the loans, the negative amortization that was certain to occur, and that the

initial interest rate, in fact, was discounted, all of which Defendant were duty bound to clearly and conspicuously disclose to Plaintiff and the Class members in the TILDS.

125. Defendant has known from the inception of their Option ARM loan scheme that these loans, (i) do not provide the promised initial interest rate for the first three (3) to five (5) years of the Note, (ii) that negative amortization was absolutely certain to occur and that Plaintiff's and the Class members' principal balances would increase, and (iii) that the initial interest rate was discounted and did not accurately reflect the interest that consumers were being charged on the loans.

126. Defendant purposefully and intentionally devised this Option ARM loan scheme to defraud and/or mislead consumers into believing that these loans would provide a low-interest rate loan, for the first three to five years of the note and that if they made their payments according to the payment schedule provided by Defendant that it would be sufficient to pay both principal and interest.

127. The omitted information, as alleged herein, was material to Plaintiff and each Class member in that had the information been disclosed, Plaintiff and each Class member would not have entered into the loans.

128. As a direct and proximate result of Defendant's failures to disclose and omission of material facts, as alleged herein, Plaintiff and each Class member have suffered damages, which include, but are not limited to, the loss of equity Plaintiff and each Class member had in their homes prior to entering these loans.

129. The wrongful conduct of Defendant, as alleged herein, was willful, oppressive, immoral, unethical, unscrupulous, substantially injurious, malicious and in conscious disregard for the well being of Plaintiff , and others similarly situated. Accordingly, Plaintiff, and the others similarly situated seek punitive damages against Defendant in an amount to deter Defendant from similar conduct in the future.

130. WHEREFORE, Plaintiff and members of the Class are entitled to all legal and equitable remedies provided by law, including but not limited to actual damages, exemplary damages, prejudgment interest and costs.

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VIII.

THIRD CAUSE OF ACTION

Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200 *et seq*., "Unfair" and "Fraudulent" Business Acts or Practices

(Against All Defendant)

131. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

132. Plaintiff brings this cause of action on behalf of themselves, on behalf of the Class, and in their capacity as a private attorney generals against all Defendants for their unfair, fraudulent and/or deceptive business acts and/or practices pursuant to California Business and Professions Code Sections 17200 et seq., which prohibits all unfair and/or fraudulent business acts and/or practices.

133. Plaintiff asserts these claims as they are representatives of an aggrieved group and as private attorney generals on behalf of the general public and other persons who have expended funds that the Defendant should be required to pay or reimburse under the equitable and restitutionary remedies provided by California Business and Professions Code Sections 17200 et seq.

134. The instant claim is predicated on the generally applicable duty of any contracting party to not misrepresent material facts, and on the duty to refrain from unfair and deceptive business practices. The Plaintiff and the Class members hereby seek to enforce a general proscription of unfair business practices and the requirement to refrain from deceptive conduct. The instant claim is predicated on duties that govern anyone engaged in any business and anyone contracting with anyone else.

135. At all times relevant during the liability period, Defendant engaged in a pattern of deceptive conduct and concealment aimed at maximizing the number of borrowers who would accept their Option ARM loan. Defendants, and each of them, marketed and sold to Plaintiff and the Class members a deceptively devised financial product. Defendant marketed and sold their Option ARM loan product to consumers, including Plaintiff, in a false or deceptive manner. Defendant sold a loan which appeared to have a very low, fixed payment and interest rate for a period of three (3) to five (5) years and no negative amortization. However, at all times relevant during the liability period, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members the true fact that

Defendant's Option ARM loan was designed to, and did, cause negative amortization to occur.

136. Defendant lured Plaintiff and the Class members into the Option ARM loan with promises of low payment and low interest. Once Plaintiff and the Class members entered into these loans, Defendant switched the interest rate charged on the loans to a much higher rate than the one they promised to Plaintiff and the Class members. After entering these loans, Class members could not escape because Defendant purposefully placed into these loans an extremely onerous prepayment penalty that made it prohibitively expensive for consumers to extricate themselves from these loans. Thus, once on the hook, consumers could not escape from Defendant loan.

137. Plaintiff and the Class members were consumers who applied for a mortgage loan through Defendant. During the loan application process, in each case, Defendant uniformly promoted, advertised, and informed Plaintiff and the Class members that in accepting these loan terms, Plaintiff and the Class members would be able to lower their mortgage payment and save money.

138. Defendant promoted their Option ARM loan product as having a low payment and interest rate, i.e., typically between 1% and 3%. However, Defendant did not disclose that this was just a "teaser" rate, the purpose of which was to get consumers to enter into loan agreements with Defendant. Defendant did not disclose to Plaintiff and the Class members that the "teaser" rate was not the fixed rate that Defendant would actually charge Plaintiff and the Class members on their outstanding loan balances after the first thirty days. Nor did Defendant disclose that the corresponding payment schedule was not the true payment required, but was rather only a partial payment of the interest accruing on the loans.

139. Based on the Defendant's representations and misconduct as alleged herein, Plaintiff and the Class members agreed to finance their primary residence through Defendant's Option ARM loan. Based on the loan documents Defendant provided, Plaintiff believed that she was being sold a home loan with a low payment and interest rate. Plaintiff and the Class members were also led to believe that if they made payments based on this interest rate, and the payment schedule provided to them by Defendant, the loan would be a no negative amortization home loan. After, the fixed interest period, the loan documents stated that the interest rate "may" change. Plaintiff and the Class members believed these facts to be true because that is what the Defendant wanted consumers to believe.

140. Defendant aggressively sold their product as a fixed low interest home loan. Defendant knew that if marketed and sold in such a manner, their Option ARM loan product would be a hugely popular and profitable product for them. Defendant also knew, however, that they were marketing their product in a false and deceptive manner. While Defendant trumpeted their low payment loans with a "teaser" rate to the public, Defendant knew, however, that this was not entirely true.

141. In fact, Defendant's Option ARM loan possessed a low, fixed *payment* but not a low interest rate. Unbeknownst to Plaintiff and the Class members, the actual interest rate they were charged on their loans was not fixed. After purchasing Defendant's Option ARM loan product, Plaintiff and the Class members never actually received the benefit of the low advertised interest rate, or, in some cases, consumers received the low rate for just a single month. Immediately, thereafter, Defendant in every instance and for every loan increased the interest rate they charged Plaintiff and the Class members. Once Plaintiff and the Class members accepted Defendant's Option ARM loan, they had no viable option to extricate themselves because the loans contracts included a draconian pre-payment penalty.

142. Defendant perpetrated this bait and switch scheme on Plaintiff and the Class members in a common and uniform manner. Defendant's misconduct and failures to disclose the truth about the actual interest rate charged on the loans and describing the loans as having a low payment that corresponded to a listed "teaser" rate was, at all times relevant, deceptive and unfair. Defendant initiated this scheme in order to maximize the amount of the loans issued to consumers and to maximize Defendant's profits.

143. The acts, misrepresentations, omissions, and practices of Defendant alleged above constitute unfair, and/or fraudulent business acts and/or practices within the meaning of California Business and Professions Code Sections 17200 et seq.

144. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of Business and Professions Code Sections 17200, et seq.

145. Defendant's conduct, as alleged herein, was likely to deceive members of the consuming public, and at all times relevant during the liability period, Defendant's failures to disclose and omission of material facts have been and continue to be unfair, fraudulent, untrue and/or deceptive.

146. Defendant’s misconduct as alleged herein gave Defendant an unfair competitive advantage over their competitors.

147. As a direct and proximate result of the aforementioned acts, Defendant, and each of them, received monies and continues to hold the monies expended by Plaintiff and others similarly situated who purchased the Option ARM loans as described herein.

148. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a constructive trust over, and restitution of, the monies collected and realized by Defendant.

149. The harm to Plaintiff, members of the general public and others similarly situated outweighs the utility of Defendant’s policies, acts and/or practices and, consequently Defendant’s conduct herein constitutes an unlawful business act or practice within the meaning of California Business & Professions Code Sections 17200 et seq.

150. The unfair, deceptive and/or fraudulent business practices of Defendant, as alleged herein, present a continuing threat to members of the public to be mislead and/or deceived by Defendant’s Option ARM loans as described herein. Plaintiff and other members of the general public have no other remedy of law that will prevent Defendant misconduct as alleged herein from occurring and/or reoccurring in the future.

151. As a direct and proximate result of Defendant’s unfair and/or fraudulent conduct alleged herein, Plaintiff and the Class Members have lost thousands if not millions of dollars of equity in their homes. Plaintiff and Class members are direct victims of the Defendant’s unlawful conduct, and each has suffered injury in fact, and have lost money or property as a result of Defendant’s unfair competition.

152. WHEREFORE, Plaintiff and members of the Class are entitled to equitable relief, including restitution, restitutionary disgorgement of all profits accruing to Defendant because of their unfair, fraudulent, and deceptive acts and/or practices, attorneys fees and costs, declaratory relief, and a permanent injunction enjoining Defendant from their unfair, fraudulent and deceitful activity.

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IX.

FOURTH CAUSE OF ACTION

Breach of Contract

(Against All Defendants)

153. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

153. Plaintiff and the Class members entered into a written home loan agreement – the contract or Note – with Defendant. The Note was drafted by Defendant and could not be modified by Plaintiff or the Class members. The Note describes terms and respective obligations applicable to the parties herein.

154. The Note states the interest rate on the loan at 1% to 3% and indicates that it "may" change. The payment schedule in the TILDS, for the first three (3) to five (5) years of the Note, are based on this low 1% to 3% "teaser" interest rate.

155. Defendant drafted the Note and did not allow Plaintiff or the Class members any opportunity to make changes to the Note and due to Defendant's superior bargaining position, the Note was offered on a take it or leave it basis. As such, the Notes at issue are contracts of adhesion.

156. Defendant expressly and/or through their conduct and actions agreed that Plaintiff's and the Class members' monthly payment obligations would be sufficient to pay both the principal and interest owed on the loans.

157. At all times relevant during the liability period, Defendant breached this agreement and never applied any of Plaintiff's and the Class members' payments to principal.

158. The written payment schedules prepared by Defendant, and applicable to Plaintiff's and Class members' loans, show that the payment amounts owed by Plaintiff and the Class members to Defendant in year one are exactly equal to the amount required to pay off the loan if, indeed, the interest actually charged on the loan was the low interest rate promised. If Defendant performed as promised, the payments would have been sufficient to pay both principal and interest amounts.

159. Instead, Defendant immediately raised Plaintiff's and the Class members' interest rates and applied ***no part*** of Plaintiff's and the Class members' payments were applied to the principal balances on their loans. In fact, because Defendant charged more interest than was agreed to and the

payments, as disclosed by Defendant, were, at all times relevant, insufficient to cover the interest charged and thus principal balances increased (which is the negative amortization built into the loan).

160. Defendant breached the written contractual agreement by failing to apply any portion of Plaintiff's and the Class members' monthly payments towards their principal loan balances.

161. Plaintiff and the Class members, on the other hand, did all of those things the contract required of them. Plaintiff and the Class members made monthly payments in the amount required by the terms of the Note and reflected in the payment schedule prepared by Defendant.

162. As a result of Defendant's breach of the agreement, Plaintiff and the Class members have suffered harm. Plaintiff and the Class members have incurred additional charges to their principal loan balances. Plaintiff and the Class members have incurred and will continue to incur additional interest charges on the principal loan balance and surplus interest added to Plaintiff's and the Class members' principal loan balances. Furthermore, Defendant's breach has placed Plaintiff and the Class members in danger of losing their homes through foreclosure, as Defendant has caused Plaintiff's and the Class members' principal loan balances to increase and limited these consumers' ability to make their future house payments or obtain alternative home loan financing.

163. At all times relevant, there existed a gross inequality of bargaining power between the parties to the ARM loan contracts. At all times relevant, Defendant unreasonably and unconscionably exploited their superior bargaining position and foisted upon Plaintiff and the Class members extremely harsh, one-sided provisions in the loan contract, which Plaintiff and the Class members were not made aware of and did not comprehend (e.g., Defendant's fraud and failures to clearly and conspicuously disclose as alleged herein), and which attempt to severely limit Defendant's obligations under these loan contracts at the expense of Plaintiff and the Class members, as alleged herein. As a direct and proximate result of these extremely harsh, one-sided provisions, including but not limited to the provisions which seek to limit the "teaser" interest rate for one month or less, these provisions were, and are, unconscionable and therefore unenforceable.

164. WHEREFORE, Plaintiff and members of the Class are entitled to declaratory relief, compensatory damages proximately caused by Defendant breach of contract as alleged herein, pre-judgment interest, costs of suit and other relief as the Court deems just and proper.

X.

FIFTH CAUSE OF ACTION

Tortiuous Breach of Covenant of Good Faith and Fair Dealing

(Against All Defendants)

165. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

166. Defendant entered into written contracts with Plaintiff and the Class members based on representations Defendant made directly and indirectly to Plaintiff and the Class members about the terms of their loans.

167. Defendant expressly and impliedly represented to Plaintiff and the Class members that they would provide loans secured by Plaintiff's and Class members' homes, and that the loans would have a fixed interest rate at promised low interest rate for a period of three (3) to five (5) years.

168. Defendant also represented that if Plaintiff and the Class members made the monthly payments in the amount prescribed by Defendant that no negative amortization would occur. The Note expressly states and/or implies that Plaintiff's and Class members' monthly payment obligation ***will*** be applied to pay both principal and interest owed on the loan (e.g. the "*Payment Cap applies only to* ***the Principal and Interest payment****...*," and "[t]he amount of the charge will be 5.000% of my overdue payment of ***Principal and Interest*** ...") The Note further states that for each monthly payment Plaintiff and the Class members interest shall be paid before principal.

169. The written payment schedules prepared by Defendant, and applicable to Plaintiff's and the Class members' loans, show that the payment amounts owed by Plaintiff and the Class members to Defendant in year one are exactly equal to the amount required to pay off the loan if, indeed, the interest actually charged on the loan was the low interest rate promised. If the Defendant acted as it promised, the payments would have been sufficient to pay both principal and interest.

170. Instead, Defendant immediately raised Plaintiff's and the Class members' interest rate and applied ***no part*** of Plaintiff's and the Class members' payment to principal. In fact, because Defendant charged more interest than was disclosed and agreed to in the loan contracts, Plaintiff and the Class members' payments were insufficient to cover the interest that Defendant charged resulting in an increase in the amount of principal Plaintiff and the Class members owed on their homes.

171. Defendant tortiously and unfairly interfered with Plaintiff's and the Class members' rights to receive the benefits of the contract. These loans will cost Plaintiff and the Class members thousands of dollars more than represented by Defendant. Plaintiff and the Class members did not receive the fixed low interest rate home loan promised them by Defendant. Defendant has caused Plaintiff and the Class members to lose equity in their homes and therefore have denied Plaintiff and the Class members the enjoyment, security of one of their most important investments.

172. Plaintiff and the Class members, on the other hand, did all of those things the contract required of them. Plaintiff and the Class members made monthly payments in the amount required by the terms of the Note and reflected in the payment schedule prepared by Defendant.

173. At all times relevant, Defendant tortiously and unreasonably denied Plaintiff and members of the Class the benefits promised to them under the terms of the Note, including but not limited to: (i) the promised low interest rate for the first three (3) to five (5) years of the loan as reflected in the payment schedule, (ii) payments to both principal and interest during the first three (3) to five (5) years of the loan; and (iii) secretly added negative amortization to the principal balance, and charged interest on that unpaid interest.

174. Knowing the truth and motivated by profit and market share, Defendant has knowingly, willfully and tortiuously breached the implied covenant of good faith and fair dealing by engaging in the acts and/or omissions to mislead and/or deceive Plaintiff and others similarly situated as alleged herein.

175. Defendant's tortiuous breaches, as alleged herein, were committed with willful and wanton disregard for whether or not Plaintiff or others similarly situated would actually receive a home loan that would provide the promised low interest and payment rate for the first three (3) to five (5) years of the loan sufficient to pay both principal and interest.

176. Upon information and belief, and at all times relevant during the liability period, Defendant possessed full knowledge and information concerning the above facts about the Option ARM loans, and otherwise marketed and sold these loans throughout the United States, including the State of California.

177. Defendant's placing of their corporate and/or individual profits over the rights of others is particularly vile, base, contemptible, and wretched and said acts and/or omissions were performed on

the part of officers, directors, and/or managing agents of each corporate Defendant and/or taken with the advance knowledge of the officers, directors, and/or managing agents who authorized and/or ratified said acts and/or omissions. Defendant thereby acted with malice and complete indifference to and/or conscious disregard for the rights and safety of others, including Plaintiff and the General Public.

178. At all times relevant during the liability period, Defendant's conduct, as alleged herein, was malicious, oppressive, and/or fraudulent.

179. As a direct and proximate result of Defendant's misconduct, as alleged herein, Plaintiff and the Class members have suffered harm. Plaintiff and the Class members have incurred additional charges to their principal loan balances. Plaintiff and the Class members have incurred and will continue to incur additional interest charges on their principal loan balances which Defendant has secretly added to their principal loan balances. Furthermore, Defendant's tortiuous breach has caused and/or otherwise placed Plaintiff and the Class members in danger of losing their homes through foreclosure and, as a direct and proximate result of said misconduct, caused Plaintiff's and the Class members' principal loan balances to increase limiting these consumers' ability to make their future house payments or obtain alternative home loan financing.

180. WHEREFORE, Plaintiff and members of the Class are entitled to declaratory relief, all damages proximately caused by Defendant tortiuous breach of the implied covenant of good faith and fair dealing as alleged herein, punitive damages, pre-judgment interest, costs of suit and other relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all Class members pray for judgment against each Defendant, jointly and severally, as follows:

A. An order certifying this case as a class action and appointing Plaintiff and their counsel to represent the Class;

B. For actual damages according to proof;

C. For compensatory damages as permitted by law;

D. For consequential damages as permitted by law;

E. For punitive damages as permitted by law;

F. For rescission;

G. For equitable relief, including restitution;

H. For restitutionary disgorgement of all profits Defendant obtained as a result of their unfair competition;

I. For interest as permitted by law;

J. For Declaratory Relief;

K. For reasonable attorneys' fees and costs; and

L. For such other relief as is just and proper.

DATED: February 25, 2008

MARCUS J. JACKSON, ESQ

By: */S/ Marcus J. Jackson*
751 Center Dr., Suite 108-456
San Marcos, CA 92069
Phone: (760) 291-1755; Fax: (760) 432-6109

David M. Arbogast, Esq.
SPIRO MOSS BARNESS LLP
11377 W. Olympic Boulevard, Fifth Floor
Los Angeles, CA 90064-1683
Phone: (310) 235-2468; Fax: (310) 235-2456

Jonathan Shub, Esq.
SEEGER WEISS LLP
1515 Market Street, Suite 1380
Philadelphia, PA 19107
Phone: (215) 564-2300; Fax (215) 851-8029

Paul R. Kiesel, Esq.
Patrick Deblase, Esq.
Michael C. Eyerly, Esq.
KIESEL BOUCHER LARSON LLP
8648 Wilshire Boulevard
Beverly Hills, California 90210
Phone: (310) 854-4444; Fax: (310) 854-0812

Jeffrey K. Berns, Esq.
LAW OFFICES OF JEFFREY K. BERNS
19510 Ventura Blvd, Suite 200
Tarzana, California 91356
Phone: (818) 961-2000; Fax: (818) 867-4820

Attorneys for Plaintiff and all others Similarly Situated.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury to the full extent permitted by law.

DATED: February 25, 2008

MARCUS J. JACKSON, ESQ

By: *______/S/ Marcus J. Jackson______*
751 Center Dr., Suite 108-456
San Marcos, CA 92069
Phone: (760) 291-1755; Fax: (760) 432-6109

David M. Arbogast, Esq.
SPIRO MOSS BARNESS LLP
11377 W. Olympic Boulevard, Fifth Floor
Los Angeles, CA 90064-1683
Phone: (310) 235-2468; Fax: (310) 235-2456

Jonathan Shub, Esq.
SEEGER WEISS LLP
1515 Market Street, Suite 1380
Philadelphia, PA 19107
Phone: (215) 564-2300; Fax (215) 851-8029

Paul R. Kiesel, Esq.
Patrick Deblase, Esq.
Michael C. Eyerly, Esq.
KIESEL BOUCHER LARSON LLP
8648 Wilshire Boulevard
Beverly Hills, California 90210
Phone: (310) 854-4444; Fax: (310) 854-0812

Jeffrey K. Berns, Esq.
LAW OFFICES OF JEFFREY K. BERNS
19510 Ventura Blvd, Suite 200
Tarzana, California 91356
Phone: (818) 961-2000; Fax: (818) 867-4820

Attorneys for Plaintiff and all others Similarly Situated.

Exhibit No. 1

ADJUSTABLE RATE NOTE
(MTA-Twelve Month Average Index - Payment Caps)

CHRISTIAN
Loan #: 10538962
MIN: 100046900000448923

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

SEPTEMBER 11, 2006	IRVINE	CALIFORNIA
[Date]	[City]	[State]

2532 LUCIERNAGA STREET, CARLSBAD, CA 92009
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $650,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed (115.000%) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is **AMERICAN STERLING BANK, A MISSOURI CORPORATION.** I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.000%. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 1ST day of NOVEMBER, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

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Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE AND TWO TENTHS percentage point(s) 3.200% ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950%. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the 1ST day of each month beginning on NOVEMBER 1, 2006. I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on OCTOBER 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 11206 E. 24 HIGHWAY, SUGAR CREEK, MO 64054-8500 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. $2,090.66 unless adjusted under Section 3(F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1ST day of NOVEMBER, 2007, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount the Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For

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each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the 10TH Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are **greater** than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.
(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.
(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

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6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of Principal and Interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

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10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.
>
> If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.
>
> To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.
>
> If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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NOTICE TO CONSUMER

1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT.
2. YOU ARE ENTITLED TO A COPY OF THIS AGREEMENT.
3. YOU MAY PREPAY THE UNPAID BALANCE AT ANY TIME WITHOUT PENALTY.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

____

- BORROWER - DOREEN E. CHRISTIAN - DATE -

[Sign Original Only]

TRUTH-IN ENDING DISCLOSURE STA MENT

(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

Applicants: Doreen Christian

Property Address: 2532 Luciernaga St
Carlsbad, CA 92009

Application No: Christian

Prepared By: First Choice Funding Group
765 The City Drive Ste-400
Orange, CA 92868
909-230-4560

Date Prepared: 09/19/2006

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid after making all payments as scheduled
1.062 %	$ 108,507.07	$ 644,129.20	$ 752,836.27

☐ REQUIRED DEPOSIT: The annual percentage rate does not take into account your required deposit

PAYMENTS: Your payment schedule will be:

Number of Payments	Amount of Payments **	When Payments Are Due	Number of Payments	Amount of Payments **	When Payments Are Due	Number of Payments	Amount of Payments **	When Payments Are Due
		Monthly Beginning:			Monthly Beginning:			Monthly Beginning:
359	2,090.66	11/01/2006						
1	2,089.33	10/01/2036						

☐ DEMAND FEATURE: This obligation has a demand feature.
☐ VARIABLE RATE FEATURE: This loan contains a variable rate feature. A variable rate disclosure has been provided earlier.

CREDIT LIFE/CREDIT DISABILITY: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature	
Credit Life		I want credit life insurance.	Signature:
Credit Disability		I want credit disability insurance.	Signature:
Credit Life and Disability		I want credit life and disability insurance.	Signature:

INSURANCE: The following insurance is required to obtain credit:
☐ Credit life insurance ☐ Credit disability ☐ Property insurance ☐ Flood insurance
You may obtain the insurance from anyone you want that is acceptable to creditor
☐ If you purchase ☐ property ☐ flood insurance from creditor you will pay $ for a one year term.

SECURITY: You are giving a security interest in:
☐ The goods or property being purchased ☐ Real property you already own.

FILING FEES: $

LATE CHARGE: If a payment is more than 15 days late, you will be charged 5.000 % of the payment

PREPAYMENT: If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property
☐ may ☐ may, subject to conditions ☐ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties
☐ * means an estimate ☐ all dates and numerical disclosures except the late payment disclosures are estimates.

* * NOTE: The Payments shown above include reserve deposits for Mortgage Insurance (if applicable), but exclude Property Taxes and Insurance.

THE UNDERSIGNED ACKNOWLEDGES RECEIVING A COMPLETED COPY OF THIS DISCLOSURE.

Doreen Christian (Applicant) (Date) (Applicant) (Date)

(Applicant) (Date) (Applicant) (Date)

(Lender) (Date)

00007

DATE: SEPTEMBER 11, 2006
BORROWER: DOREEN E. CHRISTIAN
PROPERTY ADDRESS: 2532 LUCIERNAGA STREET, CARLSBAD, CA 92009

PREPAYMENT PENALTY ADDENDUM

CHRISTIAN
Loan #: 10538962
MIN: 100046900000448923

THIS PREPAYMENT PENALTY ADDENDUM is dated SEPTEMBER 11, 2006, and is incorporated into and amends and supplements the Note of the same date (the "Note") given by AMERICAN STERLING BANK, A MISSOURI CORPORATION (the "Lender"). The Note is secured by a Mortgage or Deed of Trust or comparable security instrument (the "Security Instrument") covering the property (the "Property") identified in the Security Instrument.

The section of the Note entitled "Borrower's Right to Prepay" is replaced with the following new section:

BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A prepayment of all of the unpaid Principal is known as a "Full Prepayment." A prepayment of only part of the unpaid Principal is known as a "Partial Prepayment." When I make a Partial or Full Prepayment, I will tell the Note Holder in writing that I am doing so.

Subject to the Prepayment Penalty specified below, I may make a Full Prepayment or Partial Prepayments of my obligation. The Note Holder will use all of my prepayments to reduce the amount of Principal that I owe under the Note. If I make a Partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment.

If within the first THIRTY-SIX months after the execution of this Note, I make prepayment(s), the total of which exceeds twenty (20) percent of the original Principal amount of this Note, I agree to pay a Prepayment Penalty in an amount equal to the payment of six (6) months' advance interest on the amount by which the total of my prepayment(s) during the twelve (12) month period immediately preceding the date of the prepayment exceeds twenty (20) percent of the original Principal amount of this Note. Interest will be calculated using the rate in effect at the time of prepayment. I will pay this Prepayment Penalty regardless of whether I sell the Property or refinance the loan with the same Lender or Note Holder.

All other terms and conditions of the above referenced Note remain in full force and effect.

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- BORROWER - DOREEN E. CHRISTIAN - DATE -